

ORIGINAL

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FILE

In the Matter of

Amendment of Section 90.631(g)  
and (h) of the Commission's Rules  
and Regulations Concerning Wide  
Area Specialized Mobile Radio  
and Business Radio Systems

RM-8029

To: Chief, Private Radio Bureau

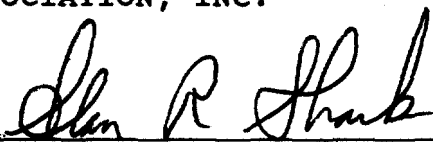
COMMENTS

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Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS  
ASSOCIATION, INC.

By:

  
Alan R. Shark, President  
1835 K Street N.W., Suite 203  
Washington, D.C. 20006

Of Counsel:

Elizabeth R. Sachs, Esq.  
Lukas, McGowan, Nace & Gutierrez  
1819 H Street, N.W., Suite 700  
Washington, D.C. 20006  
(202) 857-3500

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The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), pursuant to Section 1.405 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Comments in the above-entitled proceeding.<sup>1/</sup> In this Petition, NABER requests that FCC Rule Sections 90.631(g) and (h) be modified to permit SMR operators to construct wide-area systems using the same frequencies at multiple sites, and to allow Business licensees to operate wide-area systems without the existing "secondary" restriction. While AMTA supports the objective of the instant Petition, the Association is not persuaded that this single facet of the SMR regulatory structure can be properly addressed by itself. The issues of frequency re-use and loading attribution are sufficiently complex to warrant a more thorough evaluation in light of the evolving nature of the 800 MHz and 900 MHz environment generally, and the SMR industry specifically.

#### I. INTRODUCTION

AMTA is a nationwide, non-profit trade association dedicated to the interests of the SMR industry. A majority of the Association's members operate primarily trunked SMR systems throughout the country providing service to hundreds of thousands of customer units. AMTA's members have been in the forefront of the migration from analog to digital 800 MHz

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<sup>1/</sup> National Association of Business & Educational Radio, Inc. ("NABER") Petition for Rule Making, In the Matter of Request for Amendment of the Commission's Rules and Regulations Concerning Wide Area Specialized Mobile Radio and Business Radio Systems, RM-8029 (March 13, 1992) ("Petition").

technology.<sup>2/</sup> Some have proposed wide-area, advanced technology system configurations comparable to those authorized routinely to non-SMR eligibles under FCC Rule Section 90.631(g). Thus, AMTA has a significant interest in the outcome of this proceeding.

## II. DISCUSSION

The current SMR regulatory structure is essentially defined by the 40-mile rule and loading requirements.<sup>3/</sup> SMRs are not permitted to operate more than a single unloaded system within any 40-mile area, and, with one modest deviation in rural markets, are not permitted to expand a system until the loading requirements are satisfied. Frequencies which do not meet the required loading levels are recovered and reassigned to wait list applicants in markets where all SMR channels have been licensed.

As described in the Petition, an SMR may license facilities separated by at least 40 miles irrespective of system loading. However, SMR applicants are not eligible under FCC Rule Section 90.631(g) and (h) which permit multi-site system authorizations without regard to the 40-mile rule and, at least under subsection (g), using an aggregate loading test. Moreover, the Commission prohibits by policy the "short-spacing" of commonly owned SMR facilities located more than 40 miles apart unless the initial

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<sup>2/</sup> All existing SMR operators which have requested wide-area advanced technology authorizations from the FCC are AMTA members.

<sup>3/</sup> See, 47 C.F.R. §§90.627 and 90.631.

system is fully loaded.<sup>4/</sup> As a result, an SMR operator who might prefer to re-use his own frequencies at a site more than 40 but less than 69 miles away may not routinely do so.<sup>5/</sup> A constructed SMR cannot agree to short-space himself although consensual short-spacing would be permitted between unrelated entities at the same distances.

The instant Petition proposes to promote spectrum efficiency by permitting SMRs to reuse their frequencies at multiple sites as long as the 40-mile rule is satisfied. It also recommends elimination of the secondary designation on remote sites of wide-area Business licenses. It suggests that doing so will encourage the implementation of wide-area systems without unnecessarily depleting the available spectrum supply.

While AMTA encourages the FCC to give full consideration to the instant proposal, it recommends that it do so in conjunction with the broader re-evaluation of the 800 MHz and 900 MHz regulatory structure which the Association understands the Private Radio Bureau will be undertaking later this year. The rule changes requested are substantive and should not be considered in piecemeal fashion.

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<sup>4/</sup> The SMR standards normally permit the reassignment of co-channel frequencies at sites separated by at least 70 miles. 47 C.F.R. §90.621(b). However, that rule may be waived when an applicant can demonstrate non-overlap of the relevant station contours or when the parties short-space consensually. See, Report and Order, PR Docket No. 90-34, 68 RR2d 968 (1991).

<sup>5/</sup> There are two exceptions to this policy. The same frequencies may be reused if there is no overlap of the stations' contours or if the initial system is fully loaded.

For example, the policy prohibiting consensual short-spacing of unloaded, commonly owned SMR stations was adopted in response to a perceived abuse of the FCC's processes. By short-spacing their own unloaded frequencies, SMRs were able to prevent channel take-backs in areas of spectrum deficiency. An unloaded system would retain its full complement of channels because the short-spaced sites prevented the reassignment of those frequencies to wait list applicants.

NABER's Petition does not address that problem or how the process would work under its proposal. It is not clear if all sites would be authorized under a single system license, whether the entire "system" would have a single (presumably the earliest possible) loading deadline even if sites were authorized at different times, or whether frequencies unloaded at the initial site's loading deadline would be recovered from every site. It is also unclear what impact the aggregate loading test articulated in subsection (g) would have in the context proposed herein.

In AMTA's opinion, many of these matters will be squarely at issue as the FCC and the industry attempt to craft a regulatory structure which will facilitate the most efficient and innovative use of 800 MHz and 900 MHz spectrum. The suggestion presented in this Petition should be considered, but it should be evaluated in that context.

### III. CONCLUSION

The instant Petition proposes to revise one portion of a complex regulatory structure without analyzing the proposal's full impact or adequately describing how the modified rules would be implemented. AMTA therefore recommends that consideration of this suggestion be deferred until the FCC undertakes a thorough analysis of the 800 MHz and 900 MHz regulatory environment.

**CERTIFICATE OF SERVICE**

I, M.A. Spinks, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify, that I have on this 12th day of August, 1992, placed copies of the foregoing Comments in United States mail, postage prepaid, to the following:

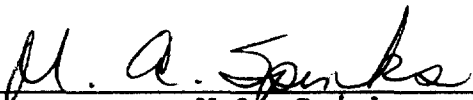
Ralph Haller, Chief\*  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 5002  
Washington, D.C. 20554

Richard J. Shiben, Chief\*  
Land Mobile and Microwave Division  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street N.W., Room 5202  
Washington, D.C. 20554

Rosalind K. Allen, Chief\*  
Rules Branch  
Land Mobile and Microwave Division  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street N.W., Room 5202  
Washington, D.C. 20554

Terry L. Fishel, Chief  
Land Mobile Branch  
Licensing Division  
Private Radio Bureau  
Federal Communications Commission  
1270 Fairfield Road  
Gettysburg, PA 17325

David E. Weisman, Esq.  
Meyer, Faller, Weisman & Rosenberg  
4400 Jenifer Street N.W.  
Washington, D.C. 20015  
Attorney for NABER

  
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M.A. Spinks

\* By Hand Delivery